

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1119 of 1998

in

SPECIAL CIVIL APPLICATION No 978 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRA B SIDHPURA

Versus

STATE OF GUJARAT

Appearance:

MR MB PARIKH for Appellant
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 24/06/1999

In this matter notice was issued by the Division Bench on 15.9.1998 and the matter is pending since then. In Civil Application, interim relief was also granted and is operative till today. The question raised in the petition is regarding passing of Pre-Service (Post Training) Examination within 3 chances. That question is no longer a res integra as recently in Tarulata D. Jani vs. State of Gujarat & ors. ; 1999(1) GLH 128, the Division Bench of this Court has concluded it by holding that in view of the provisions of Gujarat Non Secretariat, Clerks, Clerk-typists and Typists (Training & Examination) Rules 1970 (hereinafter referred to as the said Rules), administrative instructions contrary to or inconsistent with the Rules would not prevail. If, as per the requirement of statutory Rules, an employee has to clear such examination within the stipulated period and/or stipulated chances, it will have to be given effect.

2. In the circumstances, it cannot be said that the learned Single Judge has committed any error of law in dismissing the petition.

3. It was however, stated at the bar that an additional chance which can be given to an employee has also been extended to the appellant and that he has already appeared in the examination. It was also stated that the result of the said examination is likely to be declared in July 1999. As interim relief was granted in Civil Application and the appellant-petitioner is still in service, we dispose of this LPA by directing that the services of the appellant will not be terminated till the declaration of the result. If the appellant will be successful, obviously there is no question of terminating his services but if the appellant will fail, as per the decision in the case of Tarulata D. Jani (Supra), the appellant cannot be continued in service.

4. The LPA deserves to be disposed of. Notice discharged. Ad-interim relief granted earlier in Civil Application is vacated. No order as to costs.

Direct service.

(C.K.Thakker.J)

(C.K.Buch.J)

